

HLD-96 (March 2008)

March 31, 2008

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-1330

RALPH REED

v.

WARDEN THOMAS L. CARROLL, ET AL.

(D. Del. Civ. No. 06-cv-00445)

Present: SCIRICA, Chief Judge, ALDISERT and GARTH, Circuit Judges.

Submitted is appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

Clerk

MMW/EGL/isc

O R D E R

The foregoing request for a certificate of appealability is denied. Appellant's conviction became final on October 10, 2001, and the one-year statute of limitations for filing a petition under 28 U.S.C. § 2254 expired on October 11, 2002. See 28 U.S.C. § 2244(d)(1)(A). Appellant did not file his § 2254 petition until June 2006. Thus, as explained by the District Court, appellant's § 2254 petition was untimely. As the District Court also explained, appellant is not entitled to statutory or equitable tolling. For the reasons explained by the District Court, appellant has not shown that reasonable jurists would debate those conclusions. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). We note that appellant has attached to his notice of appeal a form application under § 2244 for an order authorizing the District Court to consider a second or successive § 2254 petition. The form § 2244 application, however, does not set forth any claims that are not already asserted in the § 2254 petition that is the subject of this request for a certificate of appealability. Thus, we do not construe this document as a § 2244 application. If, in the future, appellant believes that

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he has additional claims which satisfy the § 2244 standard for filing a second or successive § 2254 petition, he may file a § 2244 application in this Court seeking an order authorizing the District Court to consider a second § 2254 petition containing those claims.


A True Copy
Marcia M. Waldron
Marcia M. Waldron, Clerk

By the Court,

/s/ Anthony J. Scirica
Chief Judge

Dated: April 9, 2008

ISC/cc: Ralph Reed

Elizabeth McFarlan, Esq.